IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV-2017-485-976
[2018] NZHC 1154

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	JOHN LLEWELLYN STANLEY Applicant
AND	NEW ZEALAND LAW SOCIETY Respondent

Hearing: 16 February 2018

Appearances: J C Gwilliam for Applicant
P N Collins for Respondent

Judgment: 22 May 2018

JUDGMENT OF CLARK J

Introduction

[1] The applicant, John Stanley, wishes to be admitted as a barrister and solicitor of the High Court New Zealand. As part of that process for admission, Mr Stanley applied to the New Zealand Law Society (NZLS) for a certificate of character. After a process of inquiry Mr Stanley's application was refused.

[2] Mr Stanley now applies under s 49(2) of the Lawyers and Conveyancers Act 2006 to be admitted as a barrister and solicitor of the High Court of New Zealand. The question for my determination is whether I am satisfied, notwithstanding the NZLS's refusal to issue a certificate of character, Mr Stanley is a fit and proper person to be admitted as a barrister and solicitor.

Background

[3] Mr Stanley is 64 years of age. His career has been as an insurance broker.

[4] Mr Stanley obtained his law degree in 2011 and completed the Professional Legal Studies Course in December 2016. On 8 February 2017 Mr Stanley applied to the NZLS for a certificate of character. The application form contained the question:

> Have you ever been convicted of any crime or offence in New Zealand or overseas other than one concealed by the Criminal Records (Clean Slate) Act 2004?

Mr Stanley ticked the "Yes" box and noted next to the tick-box: "Car EBA".

[5] A supplementary letter provided more detailed responses to some of the questions in the standard form. The Wellington Branch Administrator of the NZLS requested a copy of Mr Stanley's criminal conviction history. Mr Stanley's criminal convictions report recorded the following convictions:

20 March 1978	Driving with excess blood alcohol level	Disqualification from driving; fine
31 August 1988	Drove a motor vehicle at a dangerous speed	Disqualification from driving; fine
19 November 1991	Operated a vehicle carelessly	Fine
23 January 2002	Drove with excess blood alcohol content	Fine
12 September 2007	Drove with excess breath alcohol – 3rd or subsequent	Special circumstances found – no disqualification; fine
6 December 2013	Failed to stop when followed by red/blue flashing lights	Fine
9 May 2014	Drove with excess blood alcohol – 3rd or subsequent	Disqualification from driving; fine

[6] Mr Stanley was asked to provide further information to the NZLS regarding the excess breath/blood alcohol convictions and also to provide this information to his referees.

[7] By letter dated 11 May 2017 Mr Stanley explained his convictions. By way of background Mr Stanley stated:

> Lower Hutt and [Upper Hutt] attracts high scrutiny when it comes to policing of [excess breath/blood alcohol]. Areas are easily blocked off and it was not uncommon to go through one or two checkpoints at that time while travelling home. The point here is that if you have had a few drinks don't drive because you will hit a testing area. The problem is you have no way of measuring whether you are under or over limits. This gets even more complicated where you have strict liability and body absorption rates of alcohol can change based on health and food. Note this because this is where I fell short in the 2014 case.

[8] Turning to the specific convictions Mr Stanley explained that he had not been drinking alcohol but rather taking "Hospital Linctus" for pain relief on the day leading to his 2002 conviction. Apparently, it is 40 per cent proof. Mr Stanley appeared in person and satisfied the Judge he had no knowledge of the alcohol content and was convicted without loss of license.

[9] Regarding the 2007 conviction Mr Stanley's letter accepted he failed the breath test but described himself as convicted and discharged. In fact, the criminal convictions report records that Mr Stanley was fined but due to special circumstances (needing a vehicle for employment) was not disqualified from driving.

[10] In relation to his 2014 conviction Mr Stanley offered this preliminary observation in the letter accompanying his application to the NZLS:

> By now the Law had advanced to give police powers to close down hotels that were serving too much alcohol for 48 hours without reference to the court. Proprietors were encouraged in the name of community policing to report patrons to police and driven their car out of the hotel car park (sic). The proprietor would make sure he got paid first of course. The customer would arrive home for a breath test at the front gate. The problem I have with this is the proprietor should be convicted as well. He didn't have to sell the liquor and has a statutory obligation NOT to do so.

[11] Mr Stanley explained he had lunch with a friend and consumed wine. On his account, the amount consumed was within the suggested tolerances. He did not feel intoxicated and attempted to drive home. When stopped Mr Stanley told the officer he did not feel intoxicated. But "[u]nfortunately, [the officer's] testing device did not agree …". Mr Stanley went on to explain that he "had failed to consider metabolism". Mr Stanley was charged with driving with excess blood alcohol.

[12] Mr Stanley intended to defend the charge on the basis the blood test was illegal because the police used hypodermic needles instead of vacuum tubes "as required by statute." Mr Stanley decided not to pursue a defence when he was advised he needed surgery to replace a heart valve. As a consequence of his surgery Mr Stanley maintained he has a "self-imposed zero tolerance on drinking and driving". Mr Stanley invited the NZLS to note that his convictions are limited to offences under the Land Transport Act 1998 and he has no convictions under the Crimes Act 1961.

[13] Mr Stanley concluded his letter with some final observations: his health is more important and he simply won't offend again. "The process is a nightmare". As well, since the time of his conviction the blood alcohol limit has been reduced further meaning a zero policy is to be encouraged because "you never actually know where the limit is". Finally, as a father and a grandfather, Mr Stanley said he believes in safe streets and has "total respect for what the police are doing".

[14] The NZLS received four referee reports in support of Mr Stanley's application. Because of his past convictions, it was considered appropriate to interview Mr Stanley and that occurred on 5 May 2017.

[15] At the interview Mr Stanley said he regretted the offences to which there were a number of contributing factors: the culture at the time of combining business with alcohol, his ill-health which reduced tolerance for alcohol and the stressful nature of his work. The interview notes record Mr Stanley's concern that some of the prosecutions were unsafe or unwarranted. Mr Stanley informed the President and Vice-President who interviewed him that he had been diagnosed as having early signs of an alcohol dependency but had responded to that by curtailing his drinking. He stated he avoided alcohol except on special occasions and never when he anticipated driving.

[16] Having heard from Mr Stanley, the interviewers remained unsatisfied with Mr Stanley's insight into his offending and his appreciation of the questions it might pose over his fitness to practice. Nor were they assured there was no future risk of breaches of standards or health-related lapses in judgement or behaviour.

[17] Further inquiries were made concerning a period of approximately five years not accounted for in Mr Stanley's CV. Having received the explanation for the missing years (Mr Stanley was either self-employed or unemployed and studying), confirmation of the earlier referee reports and an updated declaration from Mr Stanley the matter was referred to National Office.

[18] Mr Stanley's application was referred to the Practice Approval Committee by senior NZLS staff at the National Office. The Committee is a specialist committee of experienced lawyers appointed by the NZLS Board with delegated authority to deal with non-standard practice approval matters. Before his application was considered by the Committee Mr Stanley was given an opportunity to consider and respond to the interview notes. In his response Mr Stanley spoke of his remorse and insight into his offending. He described his law studies, especially Professor Spiller's ethics paper, as opening his mind. As well, becoming a grandparent had helped him come to terms with the "selfishness" of his actions and having a new heart valve inserted around 2014 made him realise "how fragile life really is".

[19] Following consideration of all information at its meeting on 18 July 2017, the Committee decided to decline Mr Stanley's application. In her letter of 20 July 2017 conveying to Mr Stanley the Committee's decision, the secretary recorded the Committee's concern that the focus of Mr Stanley's comments was on why he had been caught for the offences rather than the fact that the offence occurred because he had consumed alcohol and then driven. An example was Mr Stanley's reference to Lower Hutt and Upper Hutt attracting high scrutiny when it comes to policing of excess breath/blood alcohol. The Committee was also concerned that the last three excess breath/blood alcohol offences occurred when Mr Stanley was 50–60 years of age[1] and could not therefore properly be described as the "bad judgment call of a young man". The most recent offending occurred after he completed his law degree and, overall, he had a very poor driving history. It included three driving offences in addition to the four excess breath/blood alcohol convictions.

---

[1] The Practice Approval Committee in a subsequent letter (dated 23 August 2017) corrected this error as the offending had occurred when Mr Stanley was aged 48–60 years old and not when he was 50–60 years old.

[20] The letter concluded the Committee was not satisfied Mr Stanley appreciated the seriousness of his offending and the significance of it to his fitness to be admitted to the profession. The Committee agreed with the interviewers that he showed a lack of insight into his offending and a lack of judgement. His regret appeared to be about the process rather than his contravention of the law and the Committee could not be confident "at this stage" that Mr Stanley would be able to exercise better judgement in the future. For these reasons, the Committee did not feel it could accredit Mr Stanley to the Court, to the profession, or to the public as a fit and proper person for the purposes of admission as a barrister and solicitor of the High Court.

[21] By letter dated 3 August 2017 Mr Stanley responded saying it was clear he had made mistakes in interpreting the questions and he apologised and requested reassessment.

[22] Mr Stanley attended the NZLS National Office on 25 August 2017 to discuss the decision to decline his application for a certificate of character and how the matter might be resolved short of him applying to the High Court for admission. The file note records Mr Stanley saying he had not been asked the right questions by the interview panel. He was not asked if he was remorseful for his offending. He thought this went without saying and that the interview and interviewers' report was unfair and unreasonable. He considered they were not objective. Mr Stanley reiterated he no longer drinks and he sought guidance as to how to move forward. The NZLS representative advised Mr Stanley it could not give him legal advice and recommended that he seek independent legal advice.

[23] On 4 September 2017, the secretary of the Practice Approval Committee followed up the matter with Mr Stanley by email. Mr Stanley was advised that although the Committee would not revisit its decision at that time it could be asked at its next meeting on 19 September 2017 if it could provide further guidance to Mr Stanley as to what steps he needed to take and the time that needs to elapse before reapplying to the NZLS for a certificate of character. On 22 September 2017, the Committee advised it could not give Mr Stanley legal advice and it agreed Mr Stanley needed to reflect to determine how to proceed. Mr Stanley was advised to seek advice

from his counsel, Mr Gwilliam, if he intended to make an application to the High Court or adopt some other course of action taking into account the Committee's concerns.

[24] Mr Stanley filed the present application in the High Court on 22 November 2017.

Legislative requirements for admission

[25] The preconditions and requirements for admission and enrolment as a barrister and solicitor of the High Court of New Zealand are provided by Part 3 of the Lawyers and Conveyancers Act. The Act's (relevant) purposes include:[2]

(a) maintaining public confidence in the provision of legal services;

(b) protecting the consumers of legal services; and

(c) recognising the status of the legal profession.

[26] To achieve those purposes the Act, among other things, states the fundamental obligations with which, in the public interest, all lawyers must comply in providing regulated services:[3]

> **4 Fundamental obligations of lawyers**
>
> Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:
>
> (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand:
>
> (b) the obligation to be independent in providing regulated services to his or her clients:
>
> (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
>
> (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients

---

2 Lawyers and Conveyancers Act 2006, s 3.
3 Section 4.

[27] A person in the position of Mr Stanley, that is one who seeks admission as a barrister and solicitor and has not been admitted as such in any other country, is to be considered against the requirements of s 49(2). The candidate for admission must have all required qualifications for admission, be a fit and proper person to be admitted, and meet the criteria prescribed by rules made under s 54.[4]

[28] Evidence of suitability for admission may be provided by the NZLS certifying that a candidate is both a fit and proper person to be admitted and meets the prescribed criteria. In the absence of proof to the contrary a NZLS certificate certifying a candidate as both fit and proper for admission constitutes sufficient evidence of those facts.[5]

[29] Mr Stanley failed to obtain a certificate of character from the NZLS. Where a candidate for admission applies to the High Court for admission without that effective proof, the candidate must serve a copy of the application on the NZLS.[6] The NZLS must serve on the candidate a notice of opposition and the NZLS must be represented at a hearing at which the candidate's application is determined.[7]

[30] The hearing is not an appeal or a review of the NZLS's decision. But the grounds on which the decision to decline a certificate was made remain relevant to this Court's consideration of the application[8] along with other information including the applicant's evidence and referees' support for the application.

[31] The Act does not define "fit and proper" person. For the purpose of determining whether or not a person is a fit and proper person to be admitted as a barrister and solicitor the High Court, or the NZLS, may take into account any of the matters it considers relevant and in particular the matters set out in s 55(1)(a)–(l) of the Act. Of particular relevance to Mr Stanley's position is s 55(1)(a) and (1)(c):

---

4 Section 49(2).
5 Section 51.
6 Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008, r 6(3).
7 Rule 6(4).
8 *Gibbs v New Zealand Law Society* [2014] NZHC 1141 at [20].

55 Fit and proper person

(1) For the purpose of determining whether or not a person is a fit and proper person to be admitted as a barrister and solicitor of the High Court, the High Court or the New Zealand Law Society may take into account any matters it considers relevant and, in particular, may take into account any of the following matters:

(a) whether the person is of good character:

…

(c) whether the person has been convicted of an offence in New Zealand or a foreign country; and, if so,—

(i) the nature of the offence; and

(ii) the time that has elapsed since the offence was committed; and

(iii) the person's age when the offence was committed:

…

(2) The High Court or the New Zealand Law Society may determine that a person is a fit and proper person to be admitted as a barrister and solicitor even though the person—

(a) is within any of the categories mentioned in any of the paragraphs of subsection (1); or

(b) does not satisfy all of the criteria prescribed by rules made under section 54.

(3) Subsection (1) does not limit—

(a) the grounds on which it may be determined that a candidate is not a fit and proper person for admission as a barrister and solicitor; or

(b) the criteria that may be prescribed by rules made under section 54

[32] While there is no statutory definition of "fit and proper person" the principles are well-established. The principles applicable to Mr Stanley's application may be summarised as follows:

(a) The question is whether the candidate meets the standard of "unquestionable integrity, probity and trustworthiness" imported into

the concept of "fit and proper person".[9]

(b) An applicant for admission, in this case, Mr Stanley, must prove that he will properly discharge his duties to the Court and to his clients and that he is a person who may be accredited to the public by the making of an order admitting him to practice.[10]

(c) Where a candidate has past criminal convictions then assessing whether or not the candidate is a fit and proper person turns on whether there is sufficient evidence of a change of character, or reformation, to enable the Court to view favourably the application:[11]

(i) The focus is forward-looking, the function of the Court not being to punish for past conduct but to assess the candidate's "worthiness and reliability for the future".[12]

(ii) The onus on a candidate for admission is a lesser onus than that upon a person who has erred in a professional sense following admission to the legal profession.[13]

(iii) Due recognition must be given to the circumstances of youth because the "false steps of youth" are not final proof of defective character and unfitness.[14]

(iv) It is necessary to look at the facts of the case in the round and not focus solely on the fact of a previous conviction or convictions. Some kinds of conduct will result in instant disqualification of fitness for the profession but there are other kinds of conduct properly attracting disapproval but which do

---

9 *Re Lundon* [1926] NZLR 656 (CA) at 657–658; *New Zealand Law Society v Mitchell* [2010] NZCA 498, [2011] NZAR 81 at [24]–[25].

10 *Singh v Auckland District Law Society* [2002] 3 NZLR 392 (HC) at [29].

11 *Re M* [2005] 2 NZLR 544 (Full Court, HC) at [21].

12 At [21] applying *Incorporated Law Institute of New South Wales v Meagher* (1909) CLR 655 at 681 per Isaacs J.

13 At [22] citing *Ex p Lenehan* (1949) 77 CLR 403 at 422.

14 At [22] citing *Ex p Lenehan*, above n 13, at 424.

not spell unfitness for the profession.[15]

[33] In a case such as this the question is whether "the frailty or defect of character indicated by the [earlier] convictions can now be regarded as entirely spent."[16]

The evidence

[34] In his affidavit in support of his application for admission Mr Stanley deposes to believing the NZLS misinterpreted what he was trying to convey in his letter of 11 May 2017. Mr Stanley said that letter was written when he was ill in hospital with pneumonia and he was simply trying to put some context around his offending, not attempting to minimise or justify it.

[35] Mr Stanley's affidavit expresses extreme remorse for his offending, however:

> [he] would note that in respect of the 2002 and 2007 convictions there were in each of those cases special circumstances such that [he] was not disqualified from driving and received a fine only.

[36] As to the 2014 conviction Mr Stanley accepts it is in a different category from the earlier convictions and it was this conviction that "has now led [him] to adopt a zero tolerance to any consumption of alcohol" if he is driving. Mr Stanley deposes to hardly drinking at all except on special occasions. He has recently undergone a medical procedure necessitating his consumption of alcohol is kept to a minimum. As well he has embarked on a three-year drug trial in conjunction with the Hutt Hospital. The trial requires him to undergo rigorous testing and to abstain from alcohol consumption during the course of the trial.

[37] Mr Stanley offers four referee reports in support of his application. The referees are:

(a) Peter Graeme Ryan, who is a licensed immigration adviser and who says he has been associated with Mr Stanley in business for 30 years. His reference initially referred to his knowledge of the applicant's

---

15 At [23] citing *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 298.

16 *Re Owen* [2005] 2 NZLR 536 (HC) at [35].

convictions only in terms of "driving offence 2016" but he was subsequently given more detail and said he was "happy to continue as a referee";

(b) David Bassett who is the deputy mayor of Hutt City and has known Mr Stanley for seven years;

(c) Anthony Murray Richardson, accountant, of Lower Hutt, who has known Mr Stanley for 20 years "as friend, client, and former pastor"; and

(d) Catherine Iorns, who was one of Mr Stanley's law lecturers at Victoria University of Wellington and has also engaged with him socially. As well, Ms Iorns had contact with Mr Stanley in the context of litigation (with reference to *Stanley v Fuji Xerox*). Ms Iorns initially disclosed her awareness that Mr Stanley had "been convicted for drink driving" but subsequently confirmed her support for him after more detailed disclosure of his convictions.

[38] Sarah Inder, the regulatory solicitor and secretary to the Practice Approval Committee, swore an affidavit on behalf of the NZLS. Ms Inder sets out the detail of the NZLS's approach following receipt of Mr Stanley's application for a certificate of character on 8 February 2018. I have summarised in the background to this judgment the communications and correspondence between Mr Stanley and the NZLS; the interview of Mr Stanley by the Wellington branch President and Vice-President; and the review of the application by the Committee.

[39] Finally, Mr Stanley was cross-examined at the hearing before me. Mr Stanley was in the witness box answering questions in cross-examination, re-examination, from the Court and then further questioning, for approximately one hour. I found Mr Stanley's oral evidence illuminating.

Submissions

[40] Mr Gwilliam submitted that the application before the Court must be considered de novo on the basis of the information before the Court and not by way of Mr Stanley having to show that the NZLS's decision to refuse a certificate of character was wrong in law. I accept that. As Mr Gwilliam submitted this is not an appeal against the NZLS's decision.[17]

[41] Both counsel agree the question raised by Mr Stanley's application is whether the frailty, or defect of character, indicated by his offending can now be regarded as entirely spent. Mr Gwilliam submitted the Court can be so satisfied pointing, in particular, to the four excess breath/blood alcohol convictions spanning a period of nearly 40 years, Mr Stanley's referees, Mr Stanley's Certificate in Christian Missionaries and recent appointment as a marriage celebrant by the Department of Internal Affairs, and Mr Stanley's "extreme remorse" for the offending and what the consequence of his convictions have meant for him.

[42] Mr Gwilliam contended there has been a clear misunderstanding on the part of Mr Stanley as to what further information the NZLS was seeking when it sought an explanation for his convictions. It is suggested on Mr Stanley's behalf that "relying on his advocacy skills" he effectively put forward to the NZLS a plea in mitigation and that had come across too forcefully.

Assessment

[43] I consider Mr Stanley's application against the backdrop of the principles to which I have referred at [31]– [33].

[44] I have some sympathy for Mr Stanley. He is 64. He is neither in employment nor self-employed. Since obtaining his law degree in 2011 Mr Stanley said he has done "a lot of writing, a lot of legal work" but he resisted being regarded as retired. He has undertaken what he describes as christian work helping families who are not doing so well. He sees himself as an experienced commercial person having had a

---

17 *Gibbs v New Zealand Law Society*, above n 8, at [20].

successful career in the insurance brokering field and as a salesman of photocopying machines and business equipment.

[45] However, any sympathy I may feel for Mr Stanley's position and aspirations has no place in the assessment which I must make. As Dixon J stated in a decision of the High Court of Australia, applied in New Zealand, concern or sympathy for an individual is no reason for impairing or compromising in the individual's interests, the standards of the profession "which [play] so indispensable a part in the administration of justice".[18]

[46] Having regard to all of the information before me there is insufficient evidence of a change of character or reformation such that I can be satisfied Mr Stanley is now a fit and proper person to be admitted.

[47] Mr Stanley would have his 2014 conviction relegated to the past and acceptance of his contention that the various measures he has put in place, as well as his own health reasons, mean this kind of offending will not recur. Mr Stanley asks the Court to accept that as a father and now a grandfather he respects enforcement of drink driving laws and that the consequences of drinking and driving are to be taken seriously. Mr Stanley says he accepts full responsibility for his offending in that regard.

[48] While I accept the sincerity of Mr Stanley's statements and intentions he has not persuaded me the frailty revealed by his drink driving convictions are spent and can safely be ignored, and that the 2014 conviction involved a lapse which can be relegated to the past.

[49] I asked Mr Stanley what he would point to as to best demonstrating his insight into the seriousness of his offending. Mr Stanley said he felt disgraced and, he said, that is indicated by his abstinence from drinking over the past four years. As he put it "I am on top of it … I have made an oath to myself".

---

[18] *Re Davis* (1947) 75 CLR 409 at 426 applied in *Re M*, above n 12, at [19].

[50] As against Mr Stanley's heartfelt intentions he offered no evidence to demonstrate the complete turnaround which the High Court, for example in *Re Owen*, accepted as demonstrating the candidate's reformation was complete.[19]

[51] I cannot view Mr Stanley's serious lapses in judgement so as to lead him over a period of 40 years to drink and drive as entirely historical or that he would not endanger what he has achieved by a return to that conduct.

[52] Mr Stanley said his "official statement before this Court" is that he feels disgraced. As against his apparent abstinence, Mr Stanley continues to manifest a tendency to place blame elsewhere for his past convictions and to resist that they may point to a problem with alcohol. When asked whether the convictions over the span of his adult life might give reasonable cause for concern that he had an alcohol problem Mr Stanley considered that it depended on which convictions were being discussed; some people might consider the convictions indicated a problem but his referees did not and whatever issues were involved had been addressed. Mr Stanley said "there may have been an alcohol problem at some stage. I question early stages of maybe a dependency, myself. That was never confirmed".

[53] Mr Stanley was adamant the NZLS had been subjective and did not ask the right questions. The issue of his remorse, he said, was never raised. Mr Stanley explained his account of his convictions to the NZLS as an attempt to put everything in context and that he was not asked to talk about remorse. I asked Mr Stanley if he accepted Mr Gwilliam's submission that he was putting forward a plea in mitigation to the NZLS and Mr Stanley accepted that as being "right on the mark". I asked if he thought a plea in mitigation, in response to the NZLS's queries, and in the context of his application, was an appropriate response. Mr Stanley said:

> The answer to that is probably no but they never asked me any questions relating to how I felt about these EBAs. They just said, can you tell us about these EBAs. They didn't ask me how I felt about them. If they'd have said, "Did you suffer any remorse?" We may not be here today. I don't know.

---

[19] *Re Owen,* above n 16, at [37].

[54] When I put to Mr Stanley that in the context in which the NZLS was asking its questions he might have thought it was natural to volunteer how he felt about, or regarded, the convictions Mr Stanley said: "[w]ell it wasn't the question they asked me".

[55] The following expression of remorse is contained in Mr Stanley's affidavit:

> I am extremely remorseful for this offending although I would note that in respect of the 2002 and 2007 convictions there were in each of those cases special circumstances such that I was not disqualified from driving and received a fine only.

[56] I asked Mr Stanley if he could see that it appeared to be qualified. Mr Stanley accepted it appeared to be qualified but went on to emphasise the NZLS had become confused because it had failed to see the difference between a conviction as a result of taking "Hospital Linctus" and "lunch over a couple of bottles of wine".

[57] In respect of the 2014 conviction (involving a blood alcohol reading of 141 milligrams) Mr Stanley maintains his blood was taken illegally but accepts he was guilty "because the Court has ruled that and I will accept the decision of that Court". In answer to Mr Collins' question as to whether Mr Stanley accepted also the blood alcohol reading of 141 milligrams, Mr Stanley said he did not know. Although he accepted he was well over.

[58] In terms of Mr Stanley's description of the high level of police scrutiny in the Hutt roading system and his response to the NZLS that he was "hard done by" Mr Stanley maintained he "was hard done by". Mr Stanley went on to say he thought that explanation to the NZLS was not relevant. He was not giving excuses; he did wrong; he accepts that and he was being totally honest which is a requirement of admission to the bar.

[59] I had difficulty with Mr Stanley's explanation of his offending for the following reasons:

(a) Mr Stanley characterises his responses to the NZLS as honest attempts to provide the context the NZLS appeared to be seeking instead of

giving excuses.

(b) When the Practice Approval Committee gave Mr Stanley an opportunity to consider and respond to its interview notes Mr Stanley, in his response, spoke of his law studies and "especially Professor Spiller's ethics paper" as helping him understand his actions. When it was put to him in cross-examination that he had offended twice since gaining that insight Mr Stanley's answer concerned me. He referred, for the second time in evidence, to his conviction for failing to stop being "by the JPs". When earlier asked about his failure to stop for a police vehicle, leading to the conviction in 2013 for failing to stop when followed by red/blue flashing lights, Mr Stanley said it was heard by JPs. He said he technically complied with the law because he did stop. Mr Stanley said if he had stopped where the police vehicle expected him to stop it would have been dangerous and so he stopped around the corner. But the officer "wasn't happy and so I got $300 and we called it a day". Mr Stanley's references to the matter being heard by JPs, and being convicted by JPs and his entire explanation for the conviction struck me as dismissive.

(c) Likewise, in respect of the 2007 conviction, Mr Stanley described himself as being "convicted and discharged". Mr Collins put to Mr Stanley that with his knowledge of the criminal law he was convicted. Faced with the unavoidable truth of the record, Mr Stanley would go only so far as to agree it was "deemed a conviction".

(d) In similar vein when Mr Stanley was questioned about his first excess breath alcohol conviction at age 24, he accepted it was totally his fault; "it was totally my fault trying to help someone else out but that was just stupid". Mr Stanley explained he had a friend who was intoxicated. Mr Stanley took him home and on the way he was stopped. He added that with the hindsight of 40 years he should have left the car where it was. That is self-evident but I found Mr Stanley's description of what he did wrong to be consistent with his portrayal of himself as

> the innocent party throughout. Mr Stanley articulates the acknowledgements he knows are required (of fault, or error, or remorse) but his portrayal of himself as having being caught out trying to do the right thing (such as stopping at a safe place but the Police being unhappy with that) and taking the moral high ground leaves me with little confidence about the future.

[60] Mr Stanley's referee, Mr Richardson, spoke of the "substantial and fundamental steps" that Mr Stanley had taken to avoid repetition of his offending. When asked to explain the substantial and fundamental steps Mr Stanley's response was that he has "given it away". Mr Stanley proposes to rely on willpower and self-discipline and a desire not to disgrace himself further before his family. As I have said, I accept Mr Stanley is sincere in his intentions but willpower and self-discipline have not served him well in the recent past. I put to one side that the trial he is participating in apparently requires him not to drink. At some point the trial will come to an end.

[61] Mr Stanley's evidence is that he has "zero tolerance for alcohol and that he has not had a drink in four years". But he accepts he drank at his son's wedding even if it was only one drink and a toast in celebration of marrying his son. It is telling, I think, that on the one hand Mr Stanley declared himself to be completely alcohol free over the past four years but he will find occasions to excuse himself from his resolution not to drink. There is no evidence of support of any description to assist Mr Stanley adhere to his self-imposed abstinence nor indeed even any recognition he may have a problem.

[62] Mr Stanley's conviction at age 60 for drink-driving followed completion of his law degree when he presumably anticipated seeking admission to the profession. Yet even that goal did not deter this behaviour which was repetitive of past behaviour. But I am required to look forward not look back.

[63] Looking forward I am unpersuaded that the lapse which the 2014 conviction signifies can be relegated to the past and that the frailties which that conviction reflects are spent and can be safely ignored. Mr Stanley's answers to questions during the

hearing provided me with very little confidence that he could be safely accredited by the High Court to the public to be entrusted with their business and private affairs.[20] Mr Stanley's official statement is that he feels disgraced. I accept that. But it does not displace the disquiet which Mr Stanley's responses, to questions put to him, created.

[64] I have rehearsed the evidence at some length. I have done so because it is important that Mr Stanley understands the reasons for the very real reservations which I hold and why his application has not been successful. But the fact his application was unsuccessful on this occasion does not mean an application will inevitably fail on another occasion.

Conclusion

[65] Mr Stanley has not established he is a reformed person. I have found his assertions of reform to be unpersuasive. Mr Stanley resists any suggestion he may have an alcohol problem yet points to his self-imposed abstinence as being the substantial step which demonstrates there will be no further offending. Mr Stanley proposes to rely only on willpower and self-discipline when, manifestly, this has consistently failed him over a period of decades including into mature adulthood. I accept Mr Collins' submission that the peril for the legal profession is that Mr Stanley will reoffend and bring the profession into disrepute. Further, I hold the view that the public generally, and members of the profession, would not regard Mr Stanley as a person of such integrity, probity and trustworthiness as to be a suitable candidate for admission.[21]

Result

[66] The application is refused.

Karen Clark J

Solicitors:
Main Street Legal Ltd, Upper Hutt for Applicant
New Zealand Law Society, Wellington for Respondent

---

20 *Re Lundon*, above n 9, at 657–658.
21 At 657–658.